

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re : **Chapter 11 Case No.**
: **08-13555 (JMP)**
LEHMAN BROTHERS HOLDINGS INC., et al., : **(Jointly Administered)**
: **Debtors.**
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**DECLARATION OF MICHAEL J. FIRESTONE
IN SUPPORT OF THE PLAN ADMINISTRATOR'S
CROSS-MOTION TO COMPEL GIANTS STADIUM LLC
TO COMPLY WITH RULE 2004 SUBPOENAS AND OBJECTION TO
GIANTS STADIUM'S MOTION TO QUASH THE RULE 2004 SUBPOENAS**

I, MICHAEL J. FIRESTONE, declare under penalty of perjury, this 24th day of October, 2012:

1. I am an associate at Weil, Gotshal & Manges LLP, counsel for Lehman Brothers Holdings Inc. ("LBHI" or the "Plan Administrator"), and Lehman Brothers Special Financing Inc. ("LBSF," and together with LBHI, "Lehman"). I submit this declaration in support of Lehman's Cross-Motion to Compel Giants Stadium LLC to Comply with Rule 2004 Subpoenas and Objection to Giants Stadium's Motion to Quash the Rule 2004 Subpoenas (the "Cross-Motion"). The facts set forth below are based on my personal knowledge.

2. In August 2007, Giants Stadium issued auction rate securities (the "ARS") in connection with the financing of the construction of the New Meadowlands Stadium. Goldman Sachs & Co. and Lehman were initial purchasers of the ARS, and each managed auctions for certain tranches of the ARS.

3. In connection with the ARS offering, LBSF and Giants Stadium entered into two substantively identical interest rate swaps guaranteed by LBHI (the

“Transactions”), each pursuant to two separate 1992 ISDA Master Agreements dated July 27, 2007 (collectively, and together with the schedules and exhibits thereto and each confirmation exchanged in connection with the Transactions, the “Master Agreements”). Under the Transactions, LBSF paid a floating rate of interest to Giants Stadium based on the auction rate for the underlying ARS.

4. On September 15, 2008, LBHI filed its chapter 11 petition. Three days later, on September 18, 2008, Giants Stadium purported to terminate the Transactions.

5. On October 2, 2008, Giants Stadium sent LBSF letters for each of the Transactions (the “Calculation Letters”), which attempted to calculate the Settlement Amounts owed under the Master Agreements.¹

6. Purportedly applying the Loss measure, Giants Stadium determined that LBSF owed Giants Stadium Settlement Amounts of \$301,025,197 as a result of its early termination of the Transactions.

7. On September 22, 2009, Giants Stadium filed Proofs of Claim against LBHI and LBSF, each in the amount of approximately \$301,828,087 (the “Proofs of Claim”). See Claim Nos. 33561 and 33562.

8. On October 22, 2009, Giants Stadium completed and submitted a response to the “Derivatives Questionnaire,” in which it asserted claims against the LBSF estate in approximately the same amount.

9. On or about May 19, 2010, Lehman served a subpoena (the “May 19, 2010 Subpoena,” attached hereto as Exhibit A) on Giants Stadium, pursuant to Rule

¹ Capitalized terms not defined herein have the meanings ascribed to them in the Master Agreements.

2004, for the production of documents. Giant Stadium has produced certain documents pursuant to the May 19, 2010 Subpoena.

10. On March 10, 2011, Lehman served a Rule 2004 subpoena for examination of Giants Stadium's chief financial officer, Christine Procops, pursuant to the Rule 2004 Order (Docket No. 5910). On May 25, 2011, Lehman examined Ms. Procops under oath pursuant to the subpoena. Cited excerpts from the Procops Transcript (the "Procops Tr.") are attached hereto as Exhibit B.

11. On July 27, 2011, Lehman served a subpoena (the "July 27, 2011 Subpoena," attached hereto as Exhibit C) on Giants Stadium, pursuant to Rule 2004, for the testimony of "an individual or individual(s) with knowledge of the matters and documents set forth in Exhibit A" to the subpoena.

12. On August 5, 2011, Giants Stadium served written responses and objections to the July 27, 2011 Subpoena (the "August 5, 2011 Responses and Objections," attached hereto as Exhibit D). Giants Stadium also sent a letter to Lehman's counsel regarding the July 27, 2011 Subpoena that same day (the "August 5, 2011 Letter," attached hereto as Exhibit E). Giants Stadium has refused to produce a witness in response to the July 27, 2011 Subpoena.

13. Cited excerpts from the transcript of the September 14, 2011 hearing on Lehman's August 25, 2011 motion to compel the production of documents improperly withheld as privileged by Giants Stadium are attached hereto as Exhibit F.

14. Based on the Court's assurances at the September 14, 2011 hearing that Lehman would not lose any rights to continue its Rule 2004 investigation as it "see[s]

fit,” Lehman agreed to engage in settlement discussions with Giants Stadium, including convening mediation.

15. On December 6, 2011 – at or around the same time that the parties agreed to enter into mediation – Giants Stadium amended the Proofs of Claim from approximately \$301 million to approximately \$585 million. See Claim Nos. 67782 and 68103.

16. Lehman has taken no discovery with respect to the amended proofs of claim.

17. Giants Stadium’s claims – which had been sold to Bank of America on or about April 27, 2009 – were re-sold to Goal Line Partners LLC (“Goal Line”), an entity affiliated with a private equity fund known as the Baupost Group at some point prior to October 2011. No discovery has been taken by Lehman regarding the sale of Giants Stadium’s claims to Goal Line.

18. Although the mediation did not take place pursuant to the Court’s formal ADR Procedures Orders for derivative claims in the Lehman bankruptcy, it was conducted by one of the mediators appointed by the Court under the Alternative Dispute Resolution Procedures Order for Affirmative Claims of Debtors Under Derivative Contracts (Docket No. 5207). The mediation took place on February 14, 2012, and ended that same day without a resolution.

19. On or about April 9, 2012, Lehman served a subpoena on Giants Stadium seeking the production of documents (the “April 9, 2012 Subpoena,” and with the July 27, 2012 Subpoena, the “Subpoenas”) pursuant to the Rule 2004 Order. A copy of the April 9, 2012 Subpoena is attached hereto as Exhibit G.

20. In May, 2012, Lehman and Giants Stadium again decided to engage in settlement discussions, and in connection with those discussions, agreed to “freeze” all ongoing discovery, including the Subpoenas. As part of that agreement, the parties understood and confirmed that Lehman’s “willingness to enter into settlement negotiations does not constitute any waiver of [Lehman’s] rights and is without prejudice to our ability to complete our investigation under Rule 2004.” See May 9, 2012 E-mail from D. Ehrmann to M. DiMichele, attached hereto as Exhibit H. In September 2012, Lehman informed Giants Stadium that it was ending settlement discussions and would renew its investigation. Thus, the discovery “freeze” ended.

21. On September 19, 2012, Giants Stadium served Responses and Objections to the April 9, 2012 Subpoena. A copy of the Responses and Objections to the April 9, 2012 Subpoena is attached hereto as Exhibit I.

22. On October 11, 2012, the parties convened a telephonic “meet-and-confer” with respect to the Subpoenas and Giants Stadium’s refusal to comply with either. During the meet-and-confer, Giants Stadium’s counsel asserted that Lehman is not entitled to discovery under Rule 2004 because it has determined to object to Giants Stadium’s proofs of claim. Giants Stadium also refused to make any counterproposal in response to either of the Subpoenas on the grounds that it did not believe any further discovery was justified.

23. Lehman has not completed its investigation of Giants Stadium’s claims or of the issues surrounding the termination of the Transactions by Giants Stadium, and any views Lehman has regarding the Transactions are necessarily preliminary given that the investigation is not completed.

24. A copy of Giants Stadium's Responses and Objections to the May 19, 2010 Subpoena is attached hereto as Exhibit J.

Dated: October 24, 2012
New York, New York

/s/Michael J. Firestone
MICHAEL J. FIRESTONE